## FOR THE EASTERN DISTRICT OF TEXAS SHERMAN DIVISION

IN RE:	§	
	§	
HARRY J. WEATHERSPOON, JR.	§	Case No. 16-41267
XXX-XX-8443	§	Chapter 13
	§	
VIOLA J. WEATHERSPOON	§	
XXX-XX-8109	§	
	§	
907 KEY ROAD	§	
SHERMAN. TX 75090	§	
	§	
DEBTORS	§	

# DEBTORS' MOTION TO APPROVE SALE OF EXEMPT REAL ESTATE AT 907 KEY ROAD, SHERMAN, TEXAS PURSUANT TO 11 U.S.C. § 363(b)

## **NOTICE TO PARTIES IN INTEREST**

YOUR RIGHTS MAY BE AFFECTED BY THE RELIEF SOUGHT IN THIS PLEADING. YOU SHOULD READ THIS PLEADING CAREFULLY AND DISCUSS IT WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. IF YOU OPPOSE THE RELIEF SOUGHT BY THIS PLEADING, YOU MUST FILE A WRITTEN OBJECTION, EXPLAINING THE FACTUAL AND/OR LEGAL BASIS FOR OPPOSING THE RELIEF.

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE SHOWN IN THE CERTIFICATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IF FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING WITH APPROPRIATE NOTICE. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

#### TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

NOW COMES Harry J. Weatherspoon, Jr. and Viola J. Weatherspoon ("Debtors"), requesting authorization from the Court to sell certain real property:

1.

This Motion is filed pursuant to 11 U.S.C. §363(b) and §1303, Bankruptcy Rules 6004(a), 9014 and 2002, and applicable Local Rules.

2.

Debtors own certain real property consisting of approximately 25.29 acres, out of the A. Pieratt Survey, Abstract No. 944, Grayson County, Texas, and further described on Exhibit "A" attached hereto and incorporated herein by reference for all purposes, commonly known as 907 Key Road, Sherman, Texas (the "Property"). The property has previously been determined in this case to be Debtors' principal residence and homestead, and such Property has been allowed as exempt property of Debtors pursuant to 11 U.S.C. § 522(b)(3), as no objections to the exemption of the Property as Debtors' residence and homestead were timely filed.

3.

Debtors have entered into a Contract dated March 16, 2018, to sell the Property to Christopher N. and Emily N. McRoberts ("Purchaser"), for a purchase price of \$340,000.00. The sale of the Property is in the best interest of Debtors, the estate and all entities with any interest or liens against the Property. The purchase price for the Property exceeds the total amount of all liens, claims and encumbrances and the estimated cost of sale.

4.

There is an outstanding mortgage note fully secured by a lien on 10.00 acres of the Property including the house, of approximately \$44,605.00, as of the date of Debtors' Bankruptcy Petition, now held by Ditech Financial, LLC ("Ditech"), and secured by a Texas Home Equity Security Instrument as recorded in the Official Public Records of Grayson County, Texas, in Volume 3680, Page 765; and, a Texas Home Equity Affidavit and Agreement as recorded in the Official Public Records of Grayson County, Texas in Volume 3680, Page 782. See Claim No. 19 on the Court's Claims Register, which is incorporated herein by reference for all purposes. Such note shall be paid in full from the sale proceeds. Ditech shall be required to release its lien upon receipt of the note balance.

5.

Ad Valorem Property Taxes for 2015 thru 2017, shall be collected at closing with the tax lien for such years continuing against the Property until such taxes are fully paid by Seller. All prior years property taxes have been previously paid.

6.

Ad Valorem Property taxes due on the Property for 2018 shall be prorated between Debtors and Purchaser at closing. Unless the taxes due for 2018 are actually paid to all applicable taxing authorities upon closing, the Property shall remain subject to all ad valorem tax liens until such time as the taxes are fully paid by Purchaser.

7.

Prior to the filing of Debtors' case, the Internal Revenue Service ("IRS") filed a federal tax lien against Debtors in Grayson County, Texas, as reflected in the IRS's Proof of Claim filed in this case on May 24, 2017, (the "IRS Claim"), Claim No. 6 on the Court's Claims Register, which Claim is incorporated herein by reference for all purposes. The IRS Claim states a Secured

Claim against the Property of \$60,066.40, plus accruing interest. The federal tax lien of the IRS is recorded in the Official Public Records of Grayson County, Texas, in Volume 5408, Page 487, for taxes due for 2011 and 2012 only. Upon closing of the authorized sale the lien of the IRS as recorded in Volume 5408, Page 487, of the Official Public Records of Grayson County, Texas, shall be discharged from the Exhibit "A" Property, and such lien shall not be enforceable by the IRS as to such Property for all purposes, such discharge to be evidenced by a copy of The Order Granting this Motion recorded in the Public Records of Grayson County, Texas.

8.

Upon closing of the proposed sale, the full amount of the IRS Secured Claim as filed in Debtors' case shall be paid in full.

9.

Upon entry of an Order Granting this Motion; the Property shall be sold to Purchaser free and clear of all liens, claims and encumbrances, except as otherwise provided herein, and the liens, claims and encumbrances of Ditech, the IRS and all applicable taxing authorities for ad valorem taxes shall attach to the proceeds of such sale, to the same extent, with the same priorities and the same validity as such liens, claims and encumbrances previously attached to the Property, continuing until fully paid.

10.

The pending sale of the Property is set to close on or before April 27, 2018, subject to Purchaser obtaining financing and the Court's Order on this Motion. Debtors elected to use Texas exemptions any net proceeds which result from the sale of the Debtors' homestead are conditionally exempt pursuant to The Texas Constitution, art. 16 §§50 and 51, Texas Prop. Code §§41.001-.002, from the claims of all creditors for a period of six (6) months following the receipt

of such proceeds. If the full amount of the net proceeds are not reinvested in a new homestead within six (6) months from the date of sale closing, any amount not re-invested will then be considered non-exempt property of Debtor's Bankruptcy estate. Therefore, Debtors shall hold the net proceeds in trust strictly in accordance with this Motion. The Debtors shall place the net proceeds in a segregated bank account used for no other purpose, and shall tender to the Chapter 13 Trustee the name, address, account number of such bank, along with evidence of the deposit of the net proceeds.

11.

Debtors shall not withdraw any of such funds until the Trustee has issued written consent, after first having been furnished notice from Debtors reflecting the details of any proposed withdrawal along with supporting documentation. In the event that the Trustee is unable to consent to the request, then funds may only be release upon further orders of the Court. Debtors may only use the net proceeds plus any interest that accrues after the deposit to purchase another homestead within six (6) months of the closing and funding of the sale transaction for the Property. Any remaining funds, including interest thereon, which have not been used to purchase another homestead within six (6) months from the closing and funding of the sale of the property, shall immediately be tendered to the Chapter 13 Trustee by Debtors for the benefit of the Debtors' unsecured and priority creditors unless otherwise ordered by the Court. The Debtors shall furnish all documents and receipts evidencing any distribution from the segregated account within 7 business days of disbursement.

12.

Debtors shall provide a copy of the HUD-1 Closing Statement to the Chapter 13 Trustee within ten (10) days following the date of closing.

WHEREFORE, PREMISES CONSIDERED, Debtors request that upon notice and hearing, the Court enter an Order allowing the sale of the Property as proposed herein free and clear of all liens, claims and encumbrances, and for such other and further relief as Debtors may be justly entitled.

Respectfully submitted,

GARY J. CAMPBELL & ASSOCIATES, P.C.

By:

GARY J. CAMPBELL

State Bar I.D. No. 03702500

P.O. Box 758

Sherman, Texas 75091-0758

(903) 868-0545

FAX: (800) 641-9045

ATTORNEY FOR DEBTORS

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Debtor's Motion to Sell Real Estate was served upon all creditors and parties in interest as listed in the attached Master Mailing List as constituted by the Court at the time of service and all attorneys or others requesting notice, as listed below, by electronic means for those registered with the Court to receive electronic notice, otherwise by United States first-class mail, postage prepaid, this \( \) day of March, 2018.

#### Debtor:

Mr. & Mrs. Harry J. Weatherspoon, Jr. 907 Key Road Sherman, TX 75090

#### **Chapter 13 Trustee:**

Carey D. Ebert Standing Chapter 13 Trustee P.O. Box 941166 Plano, TX 75094-1166

#### **Attorneys Requesting Notice:**

Melissa L. Palo Linebarger Goggan Blair & Sampson, LLP 2777 N. Stemmons Freeway, Suite 1000 Dallas, TX 75207 Shapiro Schwartz, LLP 13105 Northwest Freeway Suite 1200 Houston, TX 77040

Michael Weems Hughes, Watters & Askanase, LLP 1201 Louisiana, 28<sup>th</sup> Floor Houston, TX 77002

## **Creditors Requesting Notice:**

Synchrony Bank c/o Recovery Management Systems Corporation 25 SE 2<sup>nd</sup> Avenue, Suite 1120 Miami, FL 33131-1605

#### **Attorney for IRS:**

Ruth Harris Yeager Assistant U.S. Attorney Eastern District of Texas 110 N. College, Suite 700 Tyler, Texas 75072

#### Purchaser:

Christopher & Emily McRoberts 3403 Red Bird Lane Grapevine, Tx 76051

#### **Title Company:**

Red River Title Company 421 N. Crockett St Sherman, TX 75090

#### **Real Estate Agent for Seller:**

Linda Cook ERA Realty 2731 W. Morton Suite 101 Denison, Texas, 75020 lindacook29@yahoo.com

#### **Real Estate Agent for Purchaser:**

Alisa Runge 150 N. Nolen Dr. Southlake, TX 76092 <u>alisarunge@gmail.com</u>

Gary J. Campbell

Legal Assistant

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### Exhibit "A"

Situated in the County of Grayson, State of Texas, being a part of the A. Pieratt Survey, Abstract No. 944, and being part of the 37 acre tract of land an purchased from J. C. Flowers at ux by deed dated December 18, 1911, as recorded in Volume 213, Page 588, Deed Records, Grayson County, Texas, and being ture particularly described by metes and bounds as follows, to-wit:

RECIRENCE at a 1/2 inch steel rod maintaining the Northernmost Northwest corner of the herein described tract of land, same being the Northwest corner of a 19 1/2 acre tract of land as purchased from J. C. Flowers et ux by deed dated December 18, 1911, as recorded in Volume 213, Page 580, Deed Records, Grayson County. 4 Texas, and further being the Northwest corner of Lot No. 5, subdivisional survey for the helms of C. C. Scott, deceased;

THENCE South 77 deg. 29 min. 48 occ. East with a fence maintaining a North live to said 37 acre tract, a distance of 733.91 ft. to a steel red in the East line of the Pleratt Survey;

THENCE South 12 deg 25 min, 43 sec, West with the East line of the Pieratt Survey, a distance of 89.61 ft. to an angle point;

THENCE South 12 deg. 07 min. West, continuing with the East line of said Pieratt Survey, a distance of 262,78 ft. to a steel rod;

THERCE South 12 deg. 48 min. 08 sec. West with the East line of the Picratt Survey common to the West line of the L. D. Henderson Survey, at 218.79 ft. passing the Southwest corner of the Henderson Survey, now with the centur of a public road, a total distance of 991.32 ft. to a nail in the center of a bridge marking the intersection of the center line of said public road and the center of a creek;

THERICE in a West and North direction with the center of said creek, the

following calls and distances:

North 47 deg. 44 min. 54 sec. West a distance of 60.21 ft.; North 00 deg. 54 min. 48 sec. East a distance of 41.60 fr.; North 86 deg. 34 min. 49 sec. West a distance of 31.02 ft.; South 22 deg. 34 min, 42,sec, West a distance of 107.24 fr.; North 68 dag. 11 min. 29 sec. West a distance of 47.94 ft.; North 35 deg. 21 min. 22 sec. West a distance of 32.85 (t.; North 08 dug. 24 min. 37 sec. West a distance of 25.76 ft.; North 41 deg. 51 min. 51 soc. West a distance of 50,23 ft.; North 55 deg, 52 min. 52 sec. West a distance of 28.00 ft.; South S7 deg. 19 min. 00 sec. West & distance of 55.75 ft.; South 12 day, 02 min. 08 suc. Wesy a distance of 31.40 ft.; South 45 deg. 57 min. 14 soc. West a distance of 28.63 ft.; South 83 dog. 52 min. 51 sec. West a distance of 35.42 ft.;

## Recorders Meme

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Exhibit "A" (continued)

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North 66 deg. 19 min. 10 sec. West a distance of 90:02 ft;; , South 74 deg. 27 min. 48 sec. West a distance of 32.20 ft.; South 52 deg. 24 min. 34 sec. West a distance of 70.89 ft.; South 80 dag, 45 min. 42 sec. West a distance of 48,38 ft.; North 06 deg. 33 min. 20 sec. East a distance of 74.98 ft.; North 32 deg. 12 min. 12 sec. West a distance of 40.97 ft.; North 70 deg. 53 min. 53 sec. West a distance of 108.79 ft.; North 61 dag, 39 min, 33 sec. West a distance of 115.83 ft. North 36 deg. 51 min. 49 sec. Wost a distance of 66.64 ft.; North 15 deg. 07 min. 36 sec. West a distance of 78.93 ft.; North 25 deg. 13 min. 22 sec. East a distance of 78.79 ft.; North S2 dog, 09 min. 43 sec. East a distance of 57.56 ft.; North 89 deg. 57 min. 10 sec. East a distance of 119.89 ft.; North OZ deg. 36 min. 34 sec. East a distance of 9.42 ft.; North 35 deg. 23 min. 39 mec. West a distance of 126.93 ft.;

North '09' deg. 29 min. 51 sec. West a distance of 29.55 ft.; North 26 deg, 30 min, 39 sec. Rast a distance of 108,35 ft.; North 05 deg. 32 min. 18 sec. West a distance of 69.60 ft.;

North 55 deg. 02 min. 39 sec. West a distance of 92,06 ft.; North 32, deg. 07 min. 54 sec. West a distance of 103.65 ft.; Korth 15 deg. 36 min. 07 sec. West a distance of 199.87 ft.;

THEMEE South 88 deg. 42 min, 23 sec. East a distance of 258,02 ft. to an old dead tree maintaining an ell corner in the aforesaid 29 1/2 acre tract of land; MERCE North 11 deg 17 min. 32 sec. East with an old fence line, a distance of 406.37 ft. to the place of beginning and containing 25.9574 scree of land.

Recorders Memo

Some portions of this Document may not be clearly legible.

Label Matrix for local noticing 0540-4 Case 16-41267 Eastern District of Texas Sherman Tue Mar 27 10:42:08 CDT 2018 Ally Financial

CitiMortgage, Inc. P.O. Box 6030 Sioux Falls, SD 57117-6030 Ally Bank PO Box 130424 Roseville MN 55113-0004

Ally Financial PO Box 380901 Minneapolis, MN 55438-0901

Amazon/ Synchrony Bank Attn: Bankruptcy Department PO Box 965060 Orlando, FL 32896-5060

American Eagle Outfitters / Synchrony Attn: Bankruptcy Department PO Box 965060 Orlando, FL 32896-5060

American Express Centurion Bank P.O. Box 297879 Fort Lauderdale, FL 33329-7879 American Express Centurion Bank c/o Becket and Lee LLP PO Box 3001 Malvern PA 19355-0701

Belk / Synchrony Bank Attn: Bankruptcy Department PO Box 965060 Orlando, FL 32896-5060

Bridgecrest Credit Company, LLC PO Box 29018 Phoenix, AZ 85038-9018 Bridgecrest Formerly Drivetime P.O. Box 29018 Phoenix, AZ 85038-9018 CITIMORTGAGE, INC. Hughes, Watters and Askanase, LLP 1201 Louisiana, 28th Floor Houston, TX 77002-5607

Caliber Home Loans 13801 Wireless Way Oklahoma City, OK 73134-2500 Caliber Home Loans PO Box 24610 Oklahoma City, OK 73124-0610 Gary J. Campbell & Associates, P.C. 320 North Travis, Suite 207 P.O. Box 758 Sherman, TX 75091-0758

Capital One NA c/o Becket and Lee LLP PO Box 3001 Malvern PA 19355-0701 Chase Corporation 16861 Bernardo Center Dr. San Diego, CA 92128-2503

ChexSystems
Attn: Consumer Relations
7805 Hudson Road, Suite 100
Woodbury, MN 55125-1703

Citi Mortgage Attn: Consumer Default 1000 Technology Drive O Fallon, MO 63368-2240 CitiMortgage, Inc. P.O. Box 790005 Saint Louis, MO 63179-0005 Dillards / Wells Fargo Bank, N.A. PO Box 10347 Des Moines, IA 50306-0347

Ditech Financial LLC
Barrett Daffin Frappier Turner & Engle,
4004 Beltline Rd. Ste 100
Addison, TX 75001-4320

Ditech Financial LLC fka Green Tree Servicin P.O. Box 6154
Rapid City, South Dakota 57709-6154

Ditech Financial, LLC PO Box 44265 Jacksonville, FL 32231-4265

Abbey U. Dreher
Barrett Daffin Frappier Turner & Engel
4004 Beltline Road, Suite 100
Addison, TX 75001-4320

Keri P. Ebeck Bernstein-Burkley 707 Grant Street Suite 2200 Gulf Tower Pittsburgh, PA 15219-1945 Carey D. Ebert P. O. Box 941166 Plano, TX 75094-1166

Equifax Credit Information Systems, Inc. P.O. Box 740241
Atlanta, GA 30374-0241

Experian P.O. Box 2002 Allen, TX 75013-2002 Frisco Spine, PA 1700 FM 544, Ste. 100 Lewisville, TX 75056-4686 Grayson County
Linebarger Goggan Blair & Sampson LLP
c/o Melissa L. Palo
2777 N. Stemmons Freeway
Suite 1000
Dallas, Tx 75207-2328
Internal Revenue Service
Centralized Insolvency Operation
P.O. Box 7346
Philadelphia, PA 19101-7346

Katherine Jan Stone 205 S. King Tom Bean, TX 75489

Linebarger Goggan Blair and Sampson, LLP 115 E. Lamar Street Sherman, TX 75090-7106

Office of the Attorney General of the United States 950 Pennsylvania Avenue, NW Washington, DC 20530-0001

Quantum3 Group LLC as agent for CP Medical LLC PO Box 788 Kirkland, WA 98083-0788

Sam's Club/ Synchrony Bank Attn: Bankruptcy Department PO Box 965060 Orlando, FL 32896-5060

TeleCheck Services, Inc. 5251 Westheimer Houston, TX 77056-5416

TransUnion Consumer Solutions P.O. Box 2000 Chester, PA 19016-2000

United Revenue Corp 204 Billings, Suite 120 Arlington, TX 76010-2495 Grayson County c/o Melissa Palo Linebarger Goggan Blair & Sampson, LLP 2777 N Stemmons Freeway Suite 1000 Dallas, TX 75207-2328

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

Khol's / Capital One Bank, N.A. PO Box 3043 Milwaukee, WI 53201-3043

Lowe's / Synchrony Bank Attn: Bankruptcy Department PO Box 965060 Orlando, FL 32896-5060

Melissa L. Palo 2777 N. Stemmons Freeway, Suite 1000 Dallas, TX 75207-2328

Recovery Management Systems Corporation 25 S.E. Second Avenue Suite 1120 Miami, FL 33131-1605

Kirk A. Schwartz Shapiro Schwartz, LLP 13105 Northwest Fwy Suite 1200 Houston, TX 77040-6355

Texoma Emergency Physicians PO Box 8775 Fort Worth, TX 76124-0775

U.S. Attorney General Department of Justice Main Justice Building 10th & Constitution Ave., NW Washington, DC 20530-0001

United States Department of Justice Office of the U.S. Trustee 300 Plaza Tower 110 N. College Tyler, TX 75702-7231 Grayson County Tax Assessor/Collector P.O. Box 2107 Sherman, TX 75091-2107

(p) JEFFERSON CAPITAL SYSTEMS LLC PO BOX 7999 SAINT CLOUD MN 56302-7999

Jeffry B. Lewis Robertson Anschutz Vetters 1500 CityWest Blvd, Suite 700 Houston, TX 77042-2558

MIDLAND FUNDING LLC PO BOX 2011 WARREN, MI 48090-2011

(p)PORTFOLIO RECOVERY ASSOCIATES LLC PO BOX 41067 NORFOLK VA 23541-1067

Recovery Management Systems Corporation 25 S.E. 2nd Avenue, Suite 1120 Miami, FL 33131-1605

Sears Credit Cards / Citi Bank PO Box 6282 Sioux Falls, SD 57117-6282

Texoma Medical Center PO Box 31001-0827 Pasadena, CA 91110-0827

US Trustee Office of the U.S. Trustee 110 N. College Ave. Suite 300 Tyler, TX 75702-7231

Harry J. Weatherspoon Jr. 907 Key Road Sherman, TX 75090-7558 Viola J. Weatherspoon 907 Key Road Sherman, TX 75090-7558 Michael Weems Hughes Watters Askanase 333 Clay, 29th Floor Houston, TX 77002-2571

Wells Fargo Bank, N.A. PO Box 10438 Des Moines, IA 50306-0438

Wescom Credit Union 5601 E. La Palma Ave. Anaheim, CA 92807-2109 Wescom Credit Union PO Box 7027 Pasadena, CA 91109-7027 Zwicker and Associates, P.C. 1 Chisolm Trail, Suite 301 Round Rock, TX 78681-5109

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Internal Revenue Service Special Procedures Branch 1100 Commerce Street M/S 5004 DAL Dallas, TX 75242

JEFFERSON CAPITAL SYSTEMS LLC PO Box 7999 St Cloud MN 56302 (d) Jefferson Capital Systems LLC PO Box 7999 St Cloud, MN 56302-9617

Portfolio Recovery Associates, LLC POB 41067 Norfolk VA 23541

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d) Caliber Home Loans, Inc. 13801 Wireless Way Oklahoma City, OK 73134-2500

(d)Carey D. Ebert P. O. Box 941166 Plano, TX 75094-1166 (d)Internal Revenue Service Centralized Insolvency Operation P.O. Box 7346 Philadelphia, PA 19101-7346

End of Label Matrix
Mailable recipients 65
Bypassed recipients 3
Total 68